

REMARKS

The above-referenced application has been reviewed in light of the Office Action mailed July 28, 2005. By the present amendment, the Applicant has amended claim 1 while canceling claims 2 and 3. It is respectfully submitted that the claims pending in the application do not introduce new subject matter, are fully supported by the specification, and are patentable over the cited prior art. Prompt and favorable consideration of these claims is earnestly sought.

In the Office Action, claims 1 and 4-12 were rejected under 35 U.S.C. § 102 (b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 (a) as obvious over U.S. Patent No. 3,875,595 to Froning (the '595 patent). The Office Action stated that the '595 patent discloses a cannula and a retractor including a shaft and an inflatable bladder. The Office Action asserted that the inflatable bladder is inherently capable of retracting opposed surfaces of a bone joint since the inflation of the bladder would inherently apply an outward pressure against the opposed surfaces to retract them. The Office Action stated that, alternatively, it would have been obvious that inflatable bladder is capable of retracting opposed surfaces of a bone joint for the same reasons.

As presently amended, claim 1 recites a system for retracting opposed surfaces of a bone joint including, *inter alia*, a cannula and a retractor. The retractor includes a shaft and an inflatable bladder wherein "expansion of the bladder separates the opposed surfaces, thereby defining a working space therebetween."

The '595 patent relates to a system for replacing a nucleus of an intervertebral disc with a prosthesis. In particular, the '595 patent discloses (Column 1, lines 7-9) that a "principal purpose of the present invention is to provide a prosthetic replacement for a damaged intervertebral disc."

Further still, the '595 patent discloses (Column 2, lines 7-9) that a normal intervertebral disc permits "flexible articulation of the adjacent vertebrae 11 and an internal resistance to flexion."

According to the '595 patent (Column 2, lines 38-47 and Figures 2-3 below), the adjacent vertebrae are spread apart using an optional tool that is not shown in the accompanying figures.

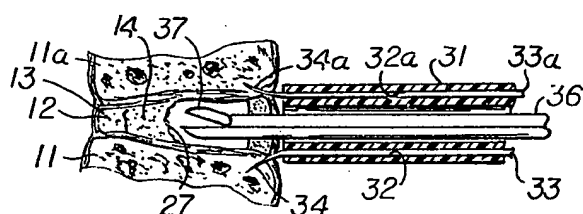


Fig. 2

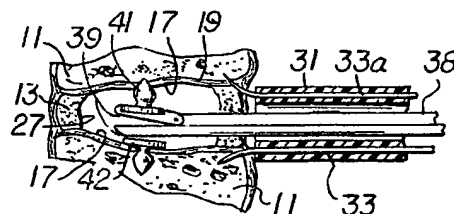


Fig. 3

The '595 patent further discloses (Column 3, lines 17-21 and 33-38, and Figure 5 reproduced below) that prosthesis 46 is formed from a material that has such that the prosthesis holds water or fluid under pressure and substantially duplicates the normal disc. Furthermore, the '595 patent discloses that the prosthesis functions as a healthy nucleus would function in a natural disc.

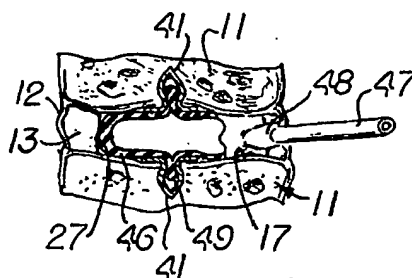


Fig. 5

Therefore, the '595 patent discloses separating adjacent vertebrae using a device that is not shown or described and replacing the nucleus of the natural disc with a prosthesis. The prosthesis disclosed in the '595 patent is merely a substitute for a healthy nucleus of a natural intervertebral disc. The '595 patent does not teach or fairly suggest that the prosthesis is capable of

Appl. No. 10/752,933
Amdt. dated November 28, 2005
Reply to Office Action mailed July 28, 2005

being inflated to separate opposing surfaces of a bone joint and define a working space therebetween. Therefore, it is respectfully submitted that the '595 patent does not disclose or suggest a system for retracting opposed surfaces of a bone joint including, *inter alia*, a cannula and a retractor having an inflatable bladder "configured to separate the opposed surfaces when expanded, thereby defining a working space therebetween" as recited in amended claim 1.

Therefore, it is respectfully submitted that amended claim 1 is neither anticipated nor suggested by the '595 patent and the rejection of the Office Action has been overcome. Since claims 4-12 depend directly or indirectly from amended claim 1, it is respectfully submitted that these claims are not anticipated or suggested by the '595 patent and the rejection of the Office Action has been overcome.

Pursuant to the Applicants continuing duty of disclosure, the Applicants would like to inform the Examiner that co-pending U.S. Application Serial No. 10/743,125 contains subject matter related to the present application and is presently before Examiner Beverly Meindl Flanagan. A non-final Office Action was mailed on September 1, 2005 in connection with the above-identified application.

Appl. No. 10/752,933
Amdt. dated November 28, 2005
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In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 1 and 4-12, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, he is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,



Dana A. Brussel
Reg. No. 45,717
Attorney for Applicant

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
Tel.: (631) 501-5713
Fax: (631) 501-3526

Send correspondence to:
Chief Patent Counsel
Tyco Healthcare Group
150 Glover Avenue
Norwalk, CT 06856